



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0010; FRL-9539-02-R4]

Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated September 15, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama Area (hereinafter referred to as the “Birmingham Area” or “Area”). The Birmingham Area is comprised of Jefferson and Shelby Counties. EPA is approving the Birmingham Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period. This action makes certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area federally enforceable as part of the Alabama SIP.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2021-0010. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain

other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, under section 109 of the Clean Air Act (CAA or Act), EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).¹ EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour

¹ In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

ozone NAAQS was set. EPA determined that the 8-hour NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Birmingham Area, which includes Jefferson and Shelby Counties, as nonattainment for the 1997 8-hour ozone NAAQS, and the designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the Birmingham Area as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. This designation became effective on July 20, 2012. *See* 77 FR 30088. On November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Birmingham Area was again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request that EPA redesignate a nonattainment area that is attaining the NAAQS to attainment, and if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.² One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing

² Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (i.e., ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.³ The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (i.e., attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value⁴ being well below the standard and the area having a historically stable design value.⁵ EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS.

³ John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni memo).

⁴ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

⁵ *See* "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas," from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas," from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,⁶ EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.⁷

In a notice of proposed rulemaking (NPRM), published on February 9, 2022, *see* 87 FR 7404, EPA proposed to approve Birmingham's LMP because the State made a showing that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it met the other maintenance plan requirements. The details of Alabama's submission and the rationale for EPA's action are explained in the NPRM. Comments on the February 9, 2022, NPRM were due on or before March 11, 2022. EPA received only one comment, which was in support of the February 9, 2022, NPRM.

II. Final Action

EPA is taking final action to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, submitted by ADEM on September 17, 2020, as a revision to the Alabama SIP.⁸ EPA is approving the Birmingham Area LMP because it includes a sufficient update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year portion of the maintenance period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) and retains the relevant provisions of the SIP under sections 110(k) and 175A of the CAA. EPA also finds that the Birmingham Area qualifies for the LMP option and that the Birmingham Area

⁶ The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM₁₀ (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide NAAQS.

⁷ *See, e.g.*, 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 SO₂ maintenance area).

⁸ The SIP revision was adopted by ADEM on September 16, 2020, and submitted by ADEM as a revision to the Alabama SIP on September 17, 2020, via a letter dated September 15, 2020.

LMP is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area over the second 10-year maintenance period (i.e., through 2026).

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be

filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.50(e), amend the table by adding an entry for “1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Birmingham Area” at the end of the table to read as follows:

§ 52.50 Identification of plan.

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(e) * * *

EPA Approved Alabama Non-Regulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
1997 8-Hour Ozone Second 10-Year Limited Maintenance Plan for the Birmingham Area	Jefferson County and Shelby County	9/16/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	

[FR Doc. 2022-07132 Filed: 4/5/2022 8:45 am; Publication Date: 4/6/2022]